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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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BMT/IBM FIVE ELM STREET NEW CANAAN, CT 06840			CHENCINSKI, SIEGFRIED E	
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				3628

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/740,943	GREENE ET AL.
	Examiner	Art Unit
	Siegfried E. Chencinski	3628

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 24 June 2005.
- 2a) This action is FINAL.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-37 and 39-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-37 and 39-45 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. ____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date ____ .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: ____ .

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

**1. Claims 1-38 and 39-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chou et al. (US Patent 6,055,504, hereafter Chou).**

**Re. Claims 1, 11, 12 & 17,** Chou discloses a method, business method and system employing a computer server (col. 1, l. 61, the use of a server is obvious) of providing a marketplace for electronic telecommunication network capacity, comprising:

- receiving at a server computer an indication of needed telecommunication network capacity, including a bid amount, for a first telecommunications entity in the telecommunications network (Col. 3, ll. 34-41);;
- receiving at a server computer an indication of available telecommunications capacity, including an ask amount, for a second telecommunications entity in the telecommunications network (Col. 3, ll. 34-41);;
- matching at said server computer the first telecommunications entity's need for telecommunications capacity, including the bid amount, with the second telecommunications entity's available telecommunications capacity, including the ask amount (Col. 3, l. 61 – Col. 4, l. 22), and;
- enabling the second telecommunications entity to provide at least a portion of said available telecommunications capacity to the first telecommunications entity in response to said matching step (Col. 4, ll. 10-22).

Chou does not explicitly disclose the method of providing a marketplace for computing capacity in a computer network, comprising:

- receiving at a server computer an indication of needed computing capacity, including a bid amount, for a first computer in the computer network, said indication including requirements for specific types of operating systems compatible with the application program needed to be run on the first computer;
- receiving at a server computer an indication of available computing capacity, including an ask amount, for a second computer in the computer network, said indication of available computing capacity indicating available types of operating systems at said second computer;
- matching at a server computer the first computer's need for computing capacity, including the bid amount, with the second computer's available computing capacity, including the ask amount; and,
- enabling the second computer to provide at least a portion of said available computing capacity to the first computer in response to said matching step.

However, Chou discloses that "This invention relates to a method and system for accommodating electronic commerce in a communications network capacity market" (Col. 1, II. 6-8); and "technological developments in computer and telecommunications industries, a plurality of players now utilize capacity over the communications networks" (Col. 3, II. 9-12). Further, Applicant states in his specification that a) Applicant's "invention ... broadly relates to computer networks and ... to providing a market place for computer capacity in a network" p. 1, II. 5-6), and that "many computers are used sporadically, with significant blocks of idle time" (p. 1, I. 9). Chou's disclosure makes it clear that computers and computer communications networks have a symbiotic relationship. Trading of network communications capacity cannot occur hidden from computer users and computer operators. Telecommunications systems are dependent on computers for their operation. Computer time sharing began in the 1960's for businesses and individuals where anyone who would establish a payment account could log on to a computer and have the computer run a program the user sent in through a modem. Large companies began sharing the capacity of IBM 360 and other computer mainframe time in approximately 1970 among their far flung facilities around

the United States by linking the computers through the networks operated by AT&T and an increasing number of other telecommunications networks, such as that created by MCI. Computer time also began to be sold at arms length at that time. An implicit aspect of trading computer time is that the trading requires the use of a telecommunications network for implementation. Further, storage capacity, processor speed, network interface and the operating systems and applications software are operating parameters in computing capacity which play similar technical operating roles in computing as operating parameters such as bandwidth, network end-points and type of communications network play in the telecommunications operations of Chou (Col. 3, II. 1-5). Consequently, it would have been obvious to an ordinary practitioner of the art at the time of applicant's invention that the teaching of Chou could be applied to the operation of a marketplace for the trading of computer capacity in order to facilitate a more efficient allocation of computer capacity and greater capacity utilization, thus facilitating the earning of incremental revenue contributions for the organization bearing the burden of the capital, operating and related overhead costs of the computers which experience the idle time (i.e. low capacity utilization) (Chou, Col. 1, II. 34-35, 45-46 ).

**Re. Claims 2-9**, Chou discloses an electronic telecommunications method wherein said indication of needed capacity further comprises

- **Re. claims 2 & 5**, a needed and available time period implying a start time and time for delivery of the needed capacity (Col. 2, I. 65 – Col. 3, I. 5).
- **Re. claim 3**, a quantity of the needed telecommunications capacity (Col. 2, I. 65 – Col. 3, I. 5, 33-37).
- **Re. claims 4, 6 & 7**, an amount expressed in units appropriate to telecommunications capacity utilization (Col. 2, I. 65 – Col. 3, I. 5, 33-37. Floating point operations or web page views are equivalent computer operations parameters).
- **Re. claim 8**, providing membership status for the plurality of member computers in the telecommunications network (Chou identifies members in the communications capacity market as "players", Col. 1, II. 64-67).

- **Re. claim 9**, a method wherein the member telecommunications systems have previously provided said indication of needed electronic communications capacity and said indication of available communications capacity (Col. 3, l. 27 –0 Col. 4, l. 22. Advance arrangements are clearly permitted and likely the majority of transactions in Chou's teaching).

What Chou does not explicitly show is:

- **Re. claims 2& 5**, a needed and available time period implying a start time and time for delivery of the needed computer.
- **Re. claim 3**, a quantity of the needed computing capacity.
- **Re. claims 4&6**, an amount expressed in units appropriate to computing capacity utilization.
- **Re. claim 8**, providing membership status for the plurality of member computers in the computer network.
- **Re. claim 9**, a method wherein the member computers have previously provided said indication of needed computing capacity and said indication of available computing capacity.

It would have been obvious to an ordinary practitioner of the art at the time of Applicant's invention for the reasons stated in the rejection of claim 1 to take the disclosures of Chou's teaching for the trading of telecommunications capacity and apply them to the trading of computer capacity, including the specific limitations of claims 2-9. Such application would have facilitated a more efficient allocation of computer capacity and greater capacity utilization, and the generation of incremental revenue contributions for the organization bearing the burden of the capital, operating and related overhead costs of the computers which experience the idle time (i.e. low capacity utilization) (Chou, Col. 1, ll. 34-35, 45-46 ).

**Re. claim 10**, Chou discloses a method wherein the member telecommunications entities provide said indication of needed electronic communications capacity and said indication of available capacity at any time that buyers and sellers can come to agreement without restriction, which includes a real-time basis for spot market

transactions (Col. 3, l. 27 – Col. 4, l. 22). Chou does not explicitly teach a method wherein the member computers provide said indication of needed computing capacity and said indication of available computing capacity on a real-time basis for spot market transactions. However, experience and common knowledge have demonstrated that unplanned real time needs should be anticipated by the ordinary practitioner of the art because of the regular experience of equipment failure with electronic telecommunications networks and with computers, as well as in virtually any other kind of operation. Consequently, it would have been obvious to an ordinary practitioner of the art at the time of Applicant's invention to enable a real-time spot market for computer capacity transactions. The motivation would have been to facilitate a more efficient allocation of computer capacity and greater capacity utilization, thus facilitating the earning of incremental revenue contributions for the organization bearing the burden of the capital, operating and related overhead costs of the computers which experience the idle time, i.e. low capacity utilization (Chou, Col. 1, ll. 34-35, 45-46 ).

**Re. claim 13,** Chou does not explicitly teach a method of providing a marketplace for computing capacity in a computer network, comprising:

- receiving at a server computer an indication of available computing capacity, including an ask amount, for a selling computer in the computer network, said indication of available computing indicating available types of operating systems at said second computer;
- receiving at a server computer an indication of needed telecommunications capacity, including a bid amount for a buying computer in the computer network, said indication of needed requirements for specific types of operating systems compatible with the application program needed to be run on the buying computer;
- matching at a server computer the buying computer's need for computing capacity, including the bid amount, with the selling computer's available computing capacity, including the ask amount, and;

- enabling the selling computer to provide at least a portion of said available computing capacity to the buying computer in response to said matching step.

Chou does disclose a method of providing a marketplace for telecommunications capacity in a telecommunications network, comprising:

- receiving at a server computer an indication of available telecommunications capacity, including an ask amount, for a selling entity in the telecommunications network;
- receiving at a server computer an indication of needed telecommunications capacity, including a bid amount, for a buying entity in the telecommunications network;
- matching at a server computer the buying entity's need for telecommunications capacity, including the bid amount, with the selling entity's available telecommunications capacity, including the ask amount, and;
- enabling the selling telecommunications entity to provide at least a portion of said available telecommunications capacity to the buying entity in response to said matching step.

For the reasons stated in the rejection of claim 1, it would have been obvious to an ordinary practitioner of the art at the time of Applicant's invention that the disclosures of Chou as regards the limitations of claim 1 cover "computers" which are selling and buying computer capacity since financial transactions are obvious in the bid, ask, price, matching and contract transaction activities taught by Chou in Col. 3, I. 27 – Col. 4, I. 22. The motivation would have been to facilitate a more efficient allocation of computer capacity and greater capacity utilization, thus facilitating the earning of incremental revenue contributions for the organization bearing the burden of the capital, operating and related overhead costs of the computers which experience the idle time, i.e. low capacity utilization (Chou, Col. 1, II. 34-35, 45-46 ).

**Re. claim 14,** Chou discloses a method wherein the step of matching further comprises:

- identifying all sellers who have available capacity during a period that the buyer has identified as needing capacity (This is an obvious basic feature of Chou's matching method. Col. 3, l. 61 – Col. 4, l. 6);
- comparing the buyer's bid amount with each identified seller's ask amount (This is also an obvious basic feature of Chou's matching method. Col. 4, ll. 7-12);
- selecting a seller having a lowest ask amount less than the buyer's bid amount (It is obvious that Chou's matching rules would search the ask amounts on file for a lower ask amount. A bid amount would have to specify match fulfillment as a "less than" bid requirement, although more likely a "less than or equal to" bid would be submitted. Col. 3, ll. 50-60);
- if the buyer's bid amount is greater than the selected seller's ask amount, then identifying the buyer and the selected seller as matched (Chou's teaching makes it obvious that the rules would cover the matching of a higher bid to a lower ask, since both parties would be satisfied. Col. 3, l. 50 – Col. 4, l. 19);
- if the buyer's bid amount is less than the selected seller's ask amount, then identifying the selected seller as a negotiating seller (The flexibility of Chou's rules teaching makes it obvious to submit bids and asks which do not fit the automated rules to be submitted to the two parties for direct negotiation unless those parties have indicated that they are unwilling to enter into direct negotiation. Col. 3, l. 50 – Col. 4, l. 19);
- signaling the buyer that a negotiating seller has been found, signaling the negotiating seller that a buyer has been found, and monitoring negotiations between the buyer and the negotiating seller (This is an obvious next step in Chou's teaching to the above limitation which identifies two parties for negotiation, and that the middle man function would have a means for monitoring the negotiations, again as established in the rules which members have agreed to follow. Col. 3, l. 50 – Col. 4, l. 19);

- if the buyer and the negotiating seller change either or both the bid amount and the ask amount so that the amounts match, the obvious final step to the above two limitations in Chou's flexible rules method. Col. 3, l. 50 – Col. 4, l. 19).

**Re. claim 15,** Chou discloses a method which further comprises:

reducing the magnitude of the quantity of available capacity from the seller, by the amount of computing capacity provided by the seller to the buyer. This is an obvious and common sense step for an ordinary practitioner to include in a capacity trading system where a seller's offered capacity amount is only partially sold. For the reasons and motivations stated in the rejection of claim 13, it would have been obvious to apply Chou's teaching to the trading of computer capacity.

**Re. claim 16,** Chou discloses a method which further comprises:

if the amount of telecommunications capacity provided by the seller to the buyer is less than the quantity of needed capacity by the buyer, then identifying another seller who has available capacity during the period that the buyer has identified as needing capacity. Chou does not explicitly disclose a method if the amount of computing capacity provided by the seller to the buyer is less than the quantity of needed capacity by the buyer, then identifying another seller who has available capacity during the period that the buyer has identified as needing capacity. However, for the reasons and motivations stated in the rejection of claims 1 and 13, an ordinary practitioner of the art at the time of Applicant's invention would have found it obvious and a common sense step to take to apply Chou's teaching to the trading of computer capacity.

**Re. Claim 18-21,** Chou discloses a business method, computer readable medium, a computer program product and system employing a computer server (Col. 1, l. 61, the use of a server is obvious) of providing a marketplace for electronic communication network capacity, comprising:

- receiving at a server computer an indication of needed communication network capacity, including a bid amount, for a first communications entity in the communications network (Col. 3, ll. 34-41);

- receiving at a server computer an indication of available communications capacity, including an ask amount, for a second communications entity in the communications network (Col. 3, ll. 34-41);
- matching at a server computer the first communications entity's need for communications capacity, including the bid amount, with the second communications entity's available communications capacity, including the ask amount (Col. 3, l. 61 – Col. 4, l. 22), and;
- enabling the second communications entity to provide at least a portion of said available communications capacity to the first communications entity in response to said matching step (Col. 4, ll. 10-22).

Chou does not explicitly disclose a business method, computer readable medium, a computer program product and system employing a computer server of providing a marketplace for electronic communication network capacity, comprising:

- receiving at a server computer an indication of available computing capacity, including an ask amount, for a selling computer in the computer network, said indication of available computing indicating available types of operating systems at said second computer;
- receiving at a server computer an indication of needed computing capacity, including a bid amount, for a buying computer in the computer network, said indication of needed requirements for specific types of operating systems compatible with the application program needed to be run on the buying computer;
- matching at a server computer the buying computer's needed computing capacity, including the bid amount, with the selling computer's available computing capacity, including the ask amount, and;
- enabling the selling computer to provide at least a portion of said available computing capacity to the buying computer in response to said matching step.

However, for the reasons stated in the rejection of claims 1, 11, 12 & 17, it would have been obvious to an ordinary practitioner of the art at the time of applicant's invention that the teaching of Chou could be applied to the operation of a marketplace for the

trading of computer capacity in order to facilitate a more efficient allocation of computer capacity and greater capacity utilization, thus facilitating the earning of incremental revenue contributions for the organization bearing the burden of the capital, operating and related overhead costs of the computers which experience the idle time, i.e. low capacity utilization (Chou, Col. 1, ll. 34-35, 45-46 ).

**Re. claim 22,** Chou discloses a system wherein the processor can read the program and perform the further steps of:

providing membership status in the market server for the plurality of member telecommunications entities in the network (Chou identifies members in the telecommunications capacity market as "players", Col. 1, ll. 64-67; Computer - Col. 1, ll. 59-63. The processor is implicit).

Chou does not explicitly disclose a system wherein the processor can read the program and perform the further steps of:

providing membership status in the market server for the plurality of member computers in the network.

However, for the reasons stated in the rejection of claims 1, 11, 12, 17 and 21, it would have been obvious to an ordinary practitioner of the art at the time of applicant's invention that the teaching of Chou could be applied to the operation of a marketplace for the trading of computer capacity and the management of membership status for the plurality of member computers in the network in order to facilitate a more efficient allocation of computer capacity and greater capacity utilization, thus facilitating the earning of incremental revenue contributions for the organization bearing the burden of the capital, operating and related overhead costs of the computers which experience the idle time, i.e. low capacity utilization (Chou, Col. 1, ll. 34-35, 45-46 ).

**Re. claim 23,** Chou discloses a method of providing a marketplace for computing capacity in a computer network, comprising:

- receiving at a server computer an indication of needed telecommunications capacity for a first entity in the telecommunications network (Col. 3, ll. 34-41);

- receiving at a server computer an indication of available telecommunications capacity for a second entity in the telecommunications network (Col. 3, ll. 34-41); and,
- enabling the second entity to provide at least a portion of said available capacity to the first entity (Col. 4, ll. 10-22).

Chou does not explicitly disclose the method of providing a marketplace for computing capacity in a computer network, comprising:

- receiving at a server computer an indication of needed computing capacity for a first computer in the computer network, said indication of available computing indicating available types of operating systems at said second computer;
- receiving at a server computer an indication of available computing capacity for a second computer in the computer network, said indication of needed requirements for specific types of operating systems compatible with the application program needed to be run on the buying computer; and
- enabling the second computer to provide at least a portion of said available computing capacity to the first computer.

However, for the reasons stated in the rejection of claim 1, it would have been obvious to an ordinary practitioner of the art at the time of applicant's invention that the teaching of Chou could be applied to the operation of a marketplace for the trading of computer capacity in order to facilitate a more efficient allocation of computer capacity and greater capacity utilization, thus facilitating the earning of incremental revenue contributions for the organization bearing the burden of the capital, operating and related overhead costs of the computers which experience the idle time, i.e. low capacity utilization (Chou, Col. 1, ll. 34-35, 45-46 ).

**Re. Claims 24-34,** Chou discloses a method further comprising:

- **Re. claim 24,** matching the first entity's need for telecommunications capacity with the second entity's available telecommunications capacity (Col. 3, l. 61 – Col. 4, l. 22).

- **Re. claim 25**, wherein said indication of needed telecommunications capacity comprises a bid amount and said indication of said available telecommunications capacity includes an ask amount (Col. 3, II 34-41).
- **Re. claim 26**, wherein said indication of needed telecommunications capacity further comprises a start time and an end time for delivery of the needed telecommunications capacity (Col. 2, I. 65 – Col. 3, I. 5).
- **Re. claim 27**, wherein said indication of needed telecommunications capacity further comprises a quantity of the needed telecommunications capacity (Col. 2, I. 65 – Col. 3, I. 5).
- **Re. claim 28**, wherein said quantity of the needed telecommunications capacity further comprises an amount expressed in appropriate telecommunications industry parameters (Col. 2, I. 65 – Col. 3, I. 5, 33-37. Floating point operations or web page views are equivalent computer operations parameters).
- **Re. claim 29**, wherein said indication of available telecommunications capacity further comprises a start time and an end time for delivery of the available telecommunications capacity (Col. 2, I. 65 – Col. 3, I. 5).
- **Re. claim 30**, wherein said indication of available telecommunications capacity further comprises a quantity of the available telecommunications capacity (Col. 2, I. 65 – Col. 3, I. 5, 34-36).
- **Re. claim 31**, wherein said quantity of the available telecommunications capacity further comprises an amount expressed in appropriate telecommunications industry units (Col. 2, I. 65 – Col. 3, I. 5, 33-37. Floating point operations or web page views are equivalent computer operations parameters).
- **Re. claim 32**, which further comprises the step of providing membership status for the plurality of member entities in the telecommunications network (“Players”, Col. 1, II. 64-67).
- **Re. claim 33**, wherein the member telecommunications entities have previously provided said indication of needed telecommunications capacity and said indication of available telecommunications capacity (Col. 3, I. 27 – Col. 4, I. 22).

Advance arrangements are clearly permitted and likely the majority of transactions in Chou's teaching).

**Re. claim 34**, wherein the member telecommunications entities provide said indication of needed telecommunications capacity and said indication of available telecommunications capacity on a real-time basis for spot market transactions (Col. 3, l. 27 – Col. 4, l. 22). Experience and common knowledge have demonstrated that unplanned real time needs should be anticipated by the ordinary practitioner of the art because of the regular experience of equipment failure with electronic telecommunications networks and with computers, as well as in virtually any other kind of operation. Consequently, it would have been obvious to an ordinary practitioner of the art at the time of Applicant's invention to enable a real-time spot market for computer capacity transactions. The motivation would have been to facilitate a more efficient allocation of computer capacity and greater capacity utilization, thus facilitating the earning of incremental revenue contributions for the organization bearing the burden of the capital, operating and related overhead costs of the computers which experience the idle time, i.e. low capacity utilization (Chou, Col. 1, ll. 34-35, 45-46 ).

**Re. Claims 24-34**, Chou does not explicitly disclose the method of providing a marketplace for computing capacity in a computer network as specifically claimed in claims 24-34, comprising:

- **Re. Claim 24**, matching the first computer's need for computing capacity with the second computer's available computing capacity.
- **Re. Claim 25**, wherein said indication of needed computing capacity comprises a bid amount and said indication of said available computing capacity includes an ask amount.
- **Re. Claim 26**, wherein said indication of needed computing capacity further comprises a start time and an end time for delivery of the needed computing capacity.
- **Re. Claim 27**, wherein said indication of needed computing capacity further comprises a quantity of the needed computing capacity.

- **Re. Claim 28**, wherein said quantity of the needed computing capacity further comprises an amount expressed in units of either floating point operations or web page views.
- **Re. Claim 29**, wherein said indication of available computing capacity further comprises a start time and an end time for delivery of the available computing capacity.
- **Re. Claim 30**, wherein said indication of available computing capacity further comprises a quantity of the available computing capacity.
- **Re. Claim 31**, wherein said quantity of the available computing capacity further comprises an amount expressed in units of either floating point operations or web page views.
- **Re. Claim 32**, which further comprises the step of providing membership status for the plurality of member computers in the computer network.
- **Re. Claim 33**, wherein the member computers have previously provided said indication of needed computing capacity and said indication of available computing capacity.
- **Re. Claim 34**, wherein the member computers provide said indication of needed computing capacity and said indication of available computing capacity on a real-time basis for spot market transactions.

However, for the reasons stated in the rejection of claims 1 and 23, it would have been obvious to an ordinary practitioner of the art at the time of applicant's invention that the teaching of Chou could be applied to the operation of a marketplace for the trading of computer capacity in order to facilitate a more efficient allocation of computer capacity and greater capacity utilization, thus facilitating the earning of incremental revenue contributions for the organization bearing the burden of the capital, operating and related overhead costs of the computers which experience the idle time, i.e. low capacity utilization (Chou, Col. 1, ll. 34-35, 45-46 ).

**Re. claim 35**, Chou discloses a method of providing a marketplace for telecommunications capacity in a telecommunications network, comprising:

- receiving at a server computer an indication of needed telecommunications capacity and first requirements for a first entity in the telecommunications network (Col. 2, l. 65 – Col. 3, l. 5);
- receiving at a server computer an indication of available telecommunications capacity and second requirements for a second entity in the telecommunications network (Col. 2, l. 65 – Col. 3, l. 5);
- matching at a server computer the first telecommunications entity's first requirements with the second telecommunications entity's first requirements (Col. 3, l. 61 – Col. 4, l. 22); and,
- enabling the second telecommunications entity to provide at least a portion of said available telecommunications capacity to the first telecommunications entity (Col. 4, ll. 10-22).

Chou does not explicitly disclose the method of providing a marketplace for computing capacity in a computer network, comprising:

- receiving an indication of needed computing capacity and first requirements for a first computer in the computer network;
- receiving an indication of available computing capacity and second requirements for a second computer in the computer network;
- matching the first computer's first requirements with the second computer's first requirements; and,
- enabling the second computer to provide at least a portion of said available computing capacity to the first computer.

wherein:

    said first requirements include a buyer's requirements for specific types of operating systems compatible with the application program buyer needs to be run; and, said second requirements include a seller's available types of operating systems.

However, for the reasons stated in the rejection of claim 1, it would have been obvious to an ordinary practitioner of the art at the time of applicant's invention that the teaching of Chou could be applied to the operation of a marketplace for the trading of computer

capacity in order to facilitate a more efficient allocation of computer capacity and greater capacity utilization, thus facilitating the earning of incremental revenue contributions for the organization bearing the burden of the capital, operating and related overhead costs of the computers which experience the idle time, i.e. low capacity utilization (Chou, Col. 1, ll. 34-35, 45-46 ).

**Re. Claim 36**, Chou discloses a method further comprising:

- said first requirements include a buyer's preferred seller or group of sellers; and said second requirements include a seller's preferred buyer or group of buyers (Preferences for certain counter parties are obvious components of the right and obligation of each "player" member to specify requirement parameters for their bid or ask submissions as a part of their "input", Col. 2, l. 55 - Col. 3, ll. 1-18, 33-41, 50-67, Col. 4, ll. 1-3).

**Re. Claims 37, 39 & 40**, Chou does not explicitly disclose the method of providing a marketplace for computing capacity in a computer network as specifically claimed in claims 37, 39 & 40, such as:

- **Re. claim 37**, said first requirements include a buyer's required storage capacity; and said second requirements include a seller's available storage capacity.
- **Re. claim 39**, said first requirements include a buyer's requirement for processor speed; and said second requirements include a seller's available processor speed.
- **Re. claim 40**, said first requirements include the characteristics of a buyer's network interface; and said second requirements include the characteristics of a seller's available network interface.

**However, re. claims 37, 39 & 40**, storage capacity, processor speed, network interface and the operating systems and applications software included as limitations in independent claim 35 (and the other independent claims, such as claims 1, 11, 12, 17) are operating parameters in computing capacity which play similar technical operating roles in computing as operating parameters such as bandwidth, network end-points and type of communications network play in the telecommunications operations of Chou

(Col. 3, ll. 1-5). For the reasons stated in the rejection of claims 1 and 35, it would have been obvious to an ordinary practitioner of the art at the time of applicant's invention that the teaching of Chou could be applied to the operation of a marketplace for the trading of computer capacity in order to facilitate a more efficient allocation of computer capacity and greater capacity utilization, thus facilitating the earning of incremental revenue contributions for the organization bearing the burden of the capital, operating and related overhead costs of the computers which experience the idle time, i.e. low capacity utilization (Chou, Col. 1, ll. 34-35, 45-46 ).

**Re. claim 41**, Chou discloses a method of providing a marketplace for telecommunications capacity in a telecommunications network, comprising:

- receiving at a server computer an indication of needed telecommunications capacity and first negotiating specification for a first entity in the telecommunications network (Col. 3, ll. 34-41);
- receiving at a server computer an indication of available telecommunications capacity and second negotiating specification for a second entity in the telecommunications network (Col. 3, ll. 34-41);
- matching at a server computer the first telecommunications entity with the second telecommunications entity using the first and second negotiating specifications (Col. 3, l. 61 – Col. 4, l.22); and,
- enabling the second telecommunications entity to provide at least a portion of said available telecommunications capacity to the first telecommunications entity (Col. 4, ll. 10-22).

Chou does not explicitly disclose the method of method of providing a marketplace for computing capacity in a computer network, comprising:

- receiving at a server computer an indication of needed computing capacity and first negotiating specification for a first computer in the computer network, said indication including requirements for specific types of operating systems compatible with the application program needed to be run on the first computer;

- receiving at a server computer an indication of available computing capacity and second negotiating specification for a second computer in the computer network, said indication of available computing indicating available types of operating systems at said second computer,
- matching at a server computer the first computer with the second computer using the first and second negotiating specifications; and,
- enabling the second computer to provide at least a portion of said available computing capacity to the first computer.

However, for the reasons stated in the rejection of claims 1, it would have been obvious to an ordinary practitioner of the art at the time of applicant's invention that the teaching of Chou could be applied to the operation of a marketplace for the trading of computer capacity in order to facilitate a more efficient allocation of computer capacity and greater capacity utilization, thus facilitating the earning of incremental revenue contributions for the organization bearing the burden of the capital, operating and related overhead costs of the computers which experience the idle time, i.e. low capacity utilization (Chou, Col. 1, II. 34-35, 45-46 ).

**Re. claim 42**, Chou does not explicitly disclose

- said first negotiating specification includes a buyer specification of a range of acceptable ask amounts;
- said second negotiating specification includes a seller specification of a range of acceptable bid amounts.

However, ranges of bid and ask amounts are well known in the art of trading. As such, it is obvious that such ranges could be made a part of the trading rules of Chou (Col. 3, II. 50-60) in order to facilitate a more efficient allocation of computer capacity and greater capacity utilization, thus facilitating the earning of incremental revenue contributions for the organization bearing the burden of the capital, operating and related overhead costs of the computers which experience the idle time, i.e. low capacity utilization (Chou, Col. 1, II. 34-35, 45-46 ).

**Re. claim 43**, Chou discloses a method of providing a marketplace for telecommunications capacity in a telecommunications network, comprising:

- receiving at a server computer an indication of needed telecommunications capacity and a buyer's bid amount for a first computer in the telecommunications network (Col. 3, ll. 34-41);
- receiving at a server computer an indication of available telecommunications capacity and a seller's ask amount for a second telecommunications entity in the telecommunications network (Col. 3, ll. 34-41);
- matching at said server computer the first telecommunications entity with the second telecommunications entity using the bid amount and the ask amount (Col. 3, l. 61 – Col. 4, l. 22); and,
- enabling the second telecommunications entity to provide at least a portion of said available telecommunications capacity to the first telecommunications entity (Col. 4, ll. 10-22).

Chou does not explicitly disclose the method of providing a marketplace for computing capacity in a computer network, comprising:

- receiving an indication of needed computing capacity and a buyer's bid amount for a first computer in the computer network, said indication including requirements for specific types of operating systems compatible with the application program needed to be run on the first computer;
- receiving an indication of available computing capacity and a seller's ask amount for a second computer in the computer network, said indication of available computing indicating available types of operating systems at said second computer;
- matching the first computer with the second computer using the bid amount and the ask amount; and,
- enabling the second computer to provide at least a portion of said available computing capacity to the first computer.

However, for the reasons stated in the rejection of claim 1, it would have been obvious to an ordinary practitioner of the art at the time of applicant's invention that the teaching of Chou could be applied to the operation of a marketplace for the trading of computer capacity in order to facilitate a more efficient allocation of computer capacity and greater capacity utilization, thus facilitating the earning of incremental revenue contributions for the organization bearing the burden of the capital, operating and related overhead costs of the computers which experience the idle time, i.e. low capacity utilization (Chou, Col. 1, II. 34-35, 45-46 ).

Chou discloses a method further comprising:

- **Re. claim 44**, matching the seller with the buyer offering the highest bid amount (It is common practice to match a seller's offer with the highest buyer bid which is within the seller's offer parameters. Chou's auction option provides this vehicle. Col. 3, I. 53).
- **Re. claim 45**, matching the buyer with the seller having the lowest ask amount (This is the obverse of the limitation of claim 45. It is also common practice to match a buyer's request with the lowest seller offer which is within the buyer's offer parameters. It is obvious that an ordinary practitioner would include this mechanism in the rules of Chou, Col. 3, II. 50-60).

For the reasons stated in the rejection of claims 1 and 43, it would have been obvious to an ordinary practitioner of the art at the time of applicant's invention that the teaching of Chou could be applied to the operation of a marketplace for the trading of computer capacity in order to facilitate a more efficient allocation of computer capacity and greater capacity utilization, thus facilitating the earning of incremental revenue contributions for the organization bearing the burden of the capital, operating and related overhead costs of the computers which experience the idle time, i.e. low capacity utilization (Chou, Col. 1, II. 34-35, 45-46 ).

***Response to Arguments***

2. Applicant's arguments filed June 24, 2005 have been fully considered but they are not persuasive.

**ARGUMENT:**

a) Applicants traverse the examiner's statement that "operating systems "are operating parameters in computing capacity which play similar technical operating roles in computing as operating parameters such as bandwidth, network end-points and type of communication networks play in the telecommunications operations of Chou [citing column 1, lines 1-5 of the reference]." (p.. 15, ll. 8-12)

"Applicants respectfully traverse this statement by the Examiner. Operating systems are qualitatively different from, and much more complex than, communication network parameters such as bandwidth, endpoints or types of network. Neither are operating systems in any way analogous to these communication network parameters.

b) Applicants assume, for the sake of argument, that one of ordinary skill in the art would find it obvious to apply Chou's teaching regarding a communication capacity market to exchanging excess computer capacity. Even so, there is nothing in the teachings of Chou, as to parameters or otherwise, that would lead one of ordinary skill to recognize that operating systems are a parameter to be specified by buyers and sellers of computer capacity. Accordingly, it is believed that nothing in the Chou reference renders it obvious to receive at a server computer indications of required or available operating systems to facilitate exchange of excess computer capacity.

". (p. 15, ll. 13-23).

**RESPONSE:**

a) The examiner respectfully disagrees with Applicant's argument. Operating systems are one parameter which both buyers and sellers of computing capacity would need to be interested in considering in assuring each other that the use of computing capacity will be feasible. Other similar parameters requiring consideration in the use of computing capacity include storage capacity, processor speed and network interface. This considerations would have been well known to the one of ordinary skill at the time of Applicant's invention. Also, as stated above and in the last Office action, Chou

discloses that "This invention relates to a method and system for accommodating electronic commerce in a communications network capacity market" (Col. 1, ll. 6-8); and "technological developments in computer and telecommunications industries, a plurality of players now utilize capacity over the communications networks" (Col. 3, ll. 9-12). Further, Applicant states in his specification that a) Applicant's "invention ... broadly relates to computer networks and ... to providing a market place for computer capacity in a network" p. 1, ll. 5-6), and that "many computers are used sporadically, with significant blocks of idle time" (p. 1, l. 9). (Chou's disclosure makes it clear that computers and computer communications networks have a symbiotic relationship. Trading of network communications capacity cannot occur hidden from computer users and computer operators. Please see balance of the examiner's rejection statement of claims 1, 11, 12 and 17, above.) Further, the one of ordinary skill would have been reminded of these considerations upon seeing Chou's disclosure of similar parameters which apply to the buying and selling of communication capacity.

- b)(1)** The Examiner recognizes that references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. *In re Nomiya*, 509 F.2d 566, 184 USPQ 607, (CCPA 1975).
- (2)** As discussed in **MPEP § 2143.01**, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify or combine reference teachings. The Federal Circuit has produced a number of decisions overturning obviousness rejections due to a lack of suggestion in the prior art of the desirability of combining references, as discussed in the aforementioned section.
- (3)** There is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. *In re McLaughlin* 443 F.2d 1392, 1395, 170 USPQ 209, 212 (CCPA 1971).
- (4)** References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. *In re Bozek*, 163 USPQ 545 9ccpa) 1969.

(5) In the instant case, the knowledge of one of ordinary skill in this matter is strong and sufficient motivation for the combination of such knowledge with the information contained in a document containing prior art which contains specific useful art or art which makes it obvious through a suggestive parallel that a similar thing can be done in the ordinary practitioner's art. The practitioner of the art of computer operations is necessarily familiar with computer networks, since the two art areas are detailed segments of connected analogous art which make up a larger whole. Buying and selling of computer time has for some time been done by passing the computer information through electronic computer networks, even though the increasingly obsolete practice of physically carrying storage media such as disk or tape drives and similar storage devices to a computer center is still in use in some cases. As such, the one of ordinary skill would have quickly realized, if he even needed the reminder, that buying and selling of computer time, in other words a market, has been a significant commercial activity for decades and that the providing of a market place for such activity was a serious and viable opportunity to consider at the time of Applicant's invention. As stated in the rejection of claims 1, 11, 12 and 17, the motivation for the ordinary practitioner would have been the facilitating the earning of incremental revenue contributions for the organization bearing the burden of the capital, operating and related overhead costs of the computers which experience the idle time (i.e. low capacity utilization) (Chou, Col. 1, II. 34-35, 45-46 ).

### ***Conclusion***

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Siegfried Chencinski whose telephone number is 571-272-6792. The Examiner can normally be reached Monday through Friday, 9am to 6pm. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Hyung S. Sough, can be reached on (571) 272-6799.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any response to this action should be mailed to:

*Commissioner of Patents and Trademarks, Washington D.C. 20231*  
or faxed to:

(571)273-8300 [Official communications; including After Final communications labeled "Box AF"]

(571) 273-6792 [Informal/Draft communications, labeled "PROPOSED" or "DRAFT"]

Hand delivered responses should be brought to the address found on the above USPTO web site in Alexandria, VA.

SEC

January 11, 2006

  
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